IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO.1315 OF 2004
IN
CUSTOM APPEAL (LODGING) NO.7 OF 2004

The Commissioner of Customs,
Import, Mumbai. Appellant
vs.
M/s.Mahavir Corporation Respondent

Mr.S.S.Pakale i/b. Mr.T.C.Kaushik for the appellant.

Mr.Jerry Lewis for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 28th October 2004

P.C.

Heard Mr.S.S.Pakale, the learned counsel for the appellant and Mr.Jerry Lewis, the learned counsel for the respondent.

2. On 19th March 2003 the order was pronounced by the Customs Excise & Gold (Control) Appellate Tribunal (CEGAT). The Custom Appeal has been preferred on 19th April, 2004 by the Commissioner of Customs, Import, Mumbai aggrieved by the said order of the CEGAT. The appeal being barred by time, by the present notice of motion it is prayed that delay in filing the present appeal be condoned. In the affidavit in support of notice of motion, it is stated that the impugned order

dated 19th March 2003 pronounced by the CEGAT was issued on 23rd May 2003. The appellant received the impugned order on 19th June 2003. On 16th March 2004 legal opinion was sought by DRI from the Law Ministry and on 30th March 2004 legal opinion given by the Law Ministry was received and then the appeal was preferred. Even if we accept that copy of the impugned order was received on 19th June 2003, in the entire affidavit in support of notice of motion, there is no explanation worth the name for the delay between 19th June 2003 until 16th March 2004 i.e. almost nine months. It is true that in the matters relating to Government the files are routed through various levels and then decision is taken but in the present case admittedly on 19th June 2003 the appellant received copy of the impugned order but legal opinion is sought only on 16th March 2004 by DRI and this delay of nine months remains unexplained.

3. In the circumstances, we find that the sufficient cause for the delay is not made out.

4. Notice of motion is, accordingly, rejected.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)